

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

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Pulaski County Circuit Court
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60CV-18-8248
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DAREL ADELSBERGER and
ANNETTE ADELSBERGER

PLAINTIFFS

vs.

UNION PACIFIC RAILROAD COMPANY

DEFENDANT

COMPLAINT

The plaintiffs by their attorney signing herein assert the following action against the defendant:

1. The plaintiffs own real property located in Pulaski County, Arkansas, where they own and operate an automobile salvage and used parts business (AA Auto).
2. The defendant is a foreign corporation registered to do business in Arkansas.
3. All relevant actions and matters occurred in Pulaski County, and this Court has jurisdiction over the parties to and subject matter of this action.
4. At all times material to this action, the defendant used and was responsible for maintaining railroad tracks and facilities in this state. One track passes through Section 2, Township 2 North, Range 11 West, Pulaski County where the plaintiffs' property is located at 8125 Highway 161, North Little Rock. When that track was built, the surrounding area was terraformed, and the track permanently altered the natural flow of surface water so that drainage

of the adjacent land (including the plaintiffs') was dependent upon trestles, culverts and drainage facilities required to be maintained by the defendant.

5. The culvert crucial to proper drainage of the plaintiffs' property is a double culvert located at approximately the south corner of the Waste Management landfill at Interstate 440 near Highway 161 in Pulaski County. Attached as Exhibit 1 is a photograph reflecting the location of the culvert. When that culvert is blocked, water cannot drain from the area, and it causes flooding of the surrounding area including the plaintiffs' property. The defendant was required to maintain that culvert and keep it clear so that water would not accumulate and damage the surrounding area. From at least 1973 to the present, the defendant failed to properly maintain and clear the culvert and blocked the proper drainage of water. During that time, the defendant's negligent maintenance of the culvert caused water to flood the plaintiffs' property thereby damaging both real and personal property and caused further loss through the interruption of the operation of their business.

6. The defendant owed a duty to the plaintiffs to properly maintain the culvert and drainage facilities, and the defendant's negligence in maintaining those facilities was the proximate cause of damage to the plaintiffs' property and their business losses. The accumulated water also created a nuisance by attracting snakes to the area.

7. The effect of the defendant's negligence is cumulative, and the plaintiffs' property continues to be in danger of flooding from accumulating rainfall. Such negligence includes but is not limited to causing the natural flow of water to be blocked; failing to anticipate water accumulation and the damage caused therefrom; failing to take remedial action to reduce or eliminate blockage and flood water accumulation; failing to keep clean and open natural and

man-made drainage paths for water that accumulates because of the defendant's tracks; and otherwise failing to exercise due care under the circumstances.

8. The plaintiffs repeatedly notified the defendant of the problem over the years, yet the defendant failed to properly maintain the culvert and drainage facilities.

9. As a direct and proximate result of the defendant's negligence the plaintiffs suffered and will suffer in the foreseeable future loss of the full use of their real property; damage to real and personal property; business interruption and losses; and decreased value of both real and personal property, all in excess of the current minimum federal jurisdictional limits.

WHEREFORE, the plaintiffs request entry of judgment against the defendant in such amount as may be ultimately determined by jury trial together with their costs and all further relief to which they may be entitled.

Darel Adelsber and
Annetter Adelsberger, Plaintiffs

By:



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